

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JON EDWARD RATTERREE,

Defendant-Appellant.

UNPUBLISHED

December 27, 2011

No. 300445

Livingston Circuit Court

LC No. 10-018767-AR

Before: WILDER, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order of the circuit court affirming his conviction of operating a vehicle while intoxicated (OWI), MCL 257.625(1). Defendant specifically appeals the circuit court's affirmance of the district court's denial of his motion to suppress evidence stemming from a *Terry* stop¹ and to dismiss the OWI charge resulting from the stop. We affirm.

At approximately 10:00 p.m. on December 28, 2009, Michigan State Police Trooper Carla Aguzzi, while on patrol duty, drove by the Lake Chemung boat launch located on Hughes Road. Aguzzi noticed defendant's vehicle in the parking lot near the boat launch. The vehicle lights were on, but it was not moving. Other than defendant's vehicle, the parking lot was empty. After Aguzzi stopped her patrol car and began backing up, defendant's vehicle began to exit the parking lot. Aguzzi activated her overhead light and initiated a traffic stop before defendant was able to exit the parking lot. Aguzzi approached the driver's side window and noticed the odor of alcohol. Defendant was ultimately charged with OWI. Defendant filed a motion in the district court to suppress evidence obtained during the stop and to dismiss the misdemeanor complaint. At the conclusion of an evidentiary hearing held on the motion, the trial court denied defendant's motion.

This Court "review[s] de novo the trial court's ultimate decision to suppress evidence on the basis of an alleged constitutional violation. But we review the trial court's findings of fact for clear error, deferring to the trial court's special opportunity to determine the credibility of

¹ *Terry v Ohio*, 392 US 1, 22; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

witnesses appearing before it.” *People v Dagwan*, 269 Mich App 338, 341-342; 711 NW2d 386 (2005) (citations omitted). A factual finding is clearly erroneous if it leaves the reviewing court with a definite and firm conviction that a mistake was made. *Id.* at 342.

On appeal, defendant argues that the stop of his vehicle was unconstitutional and that the trial court’s denial of his motion to suppress/dismiss was in error. We disagree.

“Under certain circumstances, a police officer may approach and temporarily detain a person for the purpose of investigating possible criminal behavior even though there is no probable cause to support an arrest.” *People v Jenkins*, 472 Mich 26, 32; 691 NW2d 759 (2005), citing *Terry*, 392 US at 22. Such a stop does not violate the Fourth Amendment² “when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *Illinois v Wardlow*, 528 US 119, 123; 120 S Ct 673; 145 L Ed 2d 570 (2000). “Whether an officer has a reasonable suspicion to make such an investigatory stop is determined case by case, on the basis of an analysis of the totality of the facts and circumstances.” *Jenkins*, 472 Mich at 32.

Further, in determining whether the totality of the circumstances provide reasonable suspicion to support an investigatory stop, those circumstances must be viewed “as understood and interpreted by law enforcement officers, not legal scholars . . .” Also, “[c]ommon sense and everyday life experiences predominate over uncompromising standards.” [*People v Oliver*, 464 Mich 184, 192; 627 NW2d 297 (2001) (citations omitted; text omission by *Oliver* Court).]

In affirming the district court, the circuit court observed that “if you can put a case on the edge of razor blade you’re doing it with these—with these facts.” We agree that resolution of the suppression motion is a close call, but after reviewing the facts of record in this case we conclude that Aguzzi had a reasonable, articulable suspicion that criminal activity was taking place, and that the trial court thus did not err in denying defendant’s motion to suppress/dismiss.

Trooper Aguzzi testified that it was very cold on the night in question, with Lake Chemung covered with ice and the boat launch covered with snow. When asked why she activated her overhead light, Aguzzi stated it was “[b]ecause the vehicle was leaving the area and I wanted to check to see what the driver was up to.” Aguzzi testified that she was concerned because of “the location” and the conditions. “It was [the] time of evening, it was dark, it was cold. A boat launch, in particular, is an odd place to be on a cold, wintery night,” she testified. Aguzzi stated that she has had open intoxication offenses occur at the boat launch on prior occasions and that criminal activity had taken place in the area on prior occasions, though it is not clear when such activity took place.

Aguzzi further testified that “in particular areas such as boat launches or parking lots, crime such as drugs, sexual activity, criminal sexual activity and/or alcohol is a . . . big concern for” her. While Aguzzi acknowledged that she never saw defendant driving erratically, nor did she include in her police report that she saw anything that would lead her to believe that

² US Const, Am IV.

defendant was using or selling drugs or committing any particular crime, it makes sense that a police officer would go over to investigate a vehicle sitting at a boat launch at 10:00 p.m. on a wintery late December night. From Aguzzi's testimony, it is apparent that, based on her experience, criminal activity often occurred in the area near the boat launch.

Plaintiff also argues that defendant acted in an evasive manner, which further justifies the stop. According to Aguzzi, defendant started to drive away after Aguzzi stopped her patrol vehicle and backed up. It is well established that "nervous, evasive behavior is a pertinent factor in determining reasonable suspicion." *Oliver*, 464 Mich at 196-197, quoting *Wardlow*, 528 US at 124. The fact that defendant attempted to leave the parking lot as soon as Aguzzi backed up, coupled with the additional facts discussed above provided Aguzzi with a reasonable, articulable suspicion that criminal activity was afoot such that Aguzzi's stop of defendant was not unconstitutional. The district court thus did not err in denying defendant's motion to suppress/dismiss.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Michael J. Talbot
/s/ Deborah A. Servitto